



Layard, A. (2019). Reading Law Spatially. In N. Creutzfeldt, M. Mason, & K. McConnachie (Eds.), *Routledge Handbook of Socio-Legal Theory and Methods* (1 ed., pp. 232-243). Taylor & Francis Group. <https://doi.org/10.4324/9780429952814>

Peer reviewed version

Link to published version (if available):
[10.4324/9780429952814](https://doi.org/10.4324/9780429952814)

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Reading Law Spatially

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Legal geography holds great promise for socio-legal scholars interested in the processes of spatial governance and the world around us. This chapter outlines how legal geographical research can use understandings of space to demonstrate how law can be read spatially and what this achieves. There is no single way to *do* legal geography; scholars have emphasized the importance of provincialism and diversity for both intellectual and ideological reasons. While empirical and phenomenological research have so far predominated in legal geographical work, this chapter shows how critical legal analysis that engages with geography's conceptual core can enrich both our understanding of law and law's place in the world. Approaching legal geography methodologically, this chapter will set out the cross-discipline's scope and tensions, outlining a method of reading law spatially, applying this to the English and Welsh 1999 case of *DPP v Jones* about a protest on the highway. The chapter concludes with a call for expansion in the scholarly imagination and a recognition of intellectual debts to feminist and critical race legal scholars in expanding our understandings of how we could read law.

1. Legal Geography

Legal geography investigates the co-production of space, law and society. It focuses on “the where of law”, the social spaces, lived places and landscapes which are inscribed with legal significance that “are not simply the inert sites of law but are inextricably implicated in how law happens” (Braverman et al, 2014, 1). Reflexivity between spatial and legal processes is key, so that “by reading the legal in terms of the spatial and the spatial in terms of the legal, our understanding of both ‘space’ and ‘law’ may be changed” (Blomley et al. 2001, xvii).

As a relatively new cross-discipline, legal geography lets us investigate legal practices, provisions and phenomena from a different angle. Research brings in landscapes, places, non-human beings, objects, practices and concepts, rather than only seeing law as relationships between people. The approach holds particular promise for environmental, urban, constitutional, property and land use scholars interested in the legal rules and practices which, for example, co-produce wildlife reserves, police protests or help us plan for sustainable cities. In these projects, lawyers, regulators and administrators are not engaging with static forms of nature, history or sustainability; there is an interaction between the world and the rules. Looking at law from the ground up, or from within a network of interacting people, places and things, brings a new perspective to legal work. A shift in focus from “law first” starting with the legal rules, to a grounded perspective beginning in the site or event, helps us better understand how spatial and legal practices co-produce (for example) wildlife reserves, protests or homelessness.

Of course, legal geography is not the first interdisciplinary project to shift the scholarly gaze. Legal anthropology, feminist legal studies, critical race studies, indigenous law and science

and technology studies have all long introduced more material approaches to investigate both law's place in the world as well as the world within law. Legal geography is distinctive in bringing a specific attention to space and spatiality, to the interrelationships between people and environments, analyzing how these operate across and between humans, places and non-humans, as well as core geographical concepts of place, networks, mobility, scale, relationality, distance and temporality.

The central legal geographic concept is "space", the "fundamental stuff of geography" in the words of Nigel Thrift (2003). Notoriously difficult to define, space is what we move in, through which we connect, argue, live and work. Spatiality is space's effects indicating how location, context and relationships, for example, impact on environments, people and activities. For many years Euclidean understandings provided workable definitions for space as three-dimensional "with meters or miles as its units is the geometric system that adequately describes the structure of the space of the physical world" (Sack, 1973, 16). And yet, such "deterministic, and one-dimensional treatments inherited from the 'scientific' approaches of the 1960s and early 1970s" were problematic for geographic practitioners, including planners who rejected understandings of cities as "laid out within a bounded, Euclidean, gridded plain" (Graham and Healey, 1999, 626).

An absolute conception of space has legal consequences, including when understandings of space as empty and inert are applied in colonial contexts - for instance, enrolled into legal assumptions of "terra nullius", justifying the grant of land to some people and the exclusion of others (Kedar et al, 2018). The effects of absolute conceptions of space continue generations later, telling, as Irene Watson writes: "The tale of terra nullius, its capacity to bury us and its own capacity to survive and go on burying us" (2002, 253). Even municipal governance practices draw on absolute spatial conceptions of borders and territories, implemented to govern people and places, as Marie-Eve Sylvestre et al (2015) illustrate in their study of the use of "red zones" or "no go areas" attached to bail conditions in Vancouver.

Western and Northern human geographers have for some decades now moved away from such absolutist conceptions of space, suggesting that, instead, space should be understood as relationally as possible, as a product of relationships rather than as a container within which the world proceeds. In Doreen Massey's phrase that has so captured scholars' imagination: space can be understood as "the simultaneities of stories so far" (and places as "collections of those stories, articulations within the wider power-geometries of space" (2005, 130)). Relational understandings of space, "assume that space can be acted upon, that its properties and descriptions are dependent on the distribution of mass and energy and that, by itself, space therefore would not exert physical effects" (Sack, 1980, 55). Absolute and relational understandings of space are not, however, a binary. Rather, they are identifiable and overlapping, often distinct, sometimes in tension. To borrow from actor network theory, this enables us to think of space as the *explanandum* rather than the *explanans* (the thing to be explained not the explanation). Understanding how the

geographical concept under investigation – be it space, territory, place, networks or mobility – is being conceptualised by legal actors, can explain decisions in a more rounded way than focusing on highly abstracted legal doctrine alone, prioritising as it does “legally relevant” rules and facts.

None of this is to assume that space or spatiality can be universally defined, as a concept neatly bound and packaged up to travel. Spatiality is not like political modernity, which, as Dipesh Chakrabarty explains, “is impossible to *think* of anywhere in the world without invoking certain categories and concepts, the genealogies of which go deep into the intellectual and even theological traditions of Europe” (2009, 4). Spatiality – the attributes of space – travels. Spatiality will depend upon how “space” is understood and not all jurisdictions or legal practices use space as an object, onto which law is projected. Indigenous understandings of space often focus on space and time concurrently. Maori language, for example, makes no distinction between time and space, and locations are both temporal and spatial (Tuiwai Smith, 2012, 52). Legal geography cannot assume a certain form of spatiality or automatic aspatiality. John Borrows’ work on Anishinaabe law reveals with extraordinarily clarity the spatial and temporal specificity embodied in these representations of indigenous legal knowledge. As he reminds us, our legal systems are dominated by linguistic and conceptual practices: “Some traditions, like those of the Algonkian speaking nations with which we work, are linguistically verb-based languages. Nouns or words that categorize the world into persons, places, or things are not a dominant way of organizing life.” (Borrows, 2016a, 808).

For all of these reasons, there is a growing commitment to provincialism underpinning the shared threads of legal geography. Scholars acknowledge the totalising effects of concepts and neologisms, accepting the critique that Western and European thought and thinkers can push for an apparent unilateral analytical framework rather than inviting a plurality of approaches. Legal geographic scholars are wary of universalism given legal geography’s conceptual and methodological grounding, with practitioners cautious to acknowledge “the Imperial legacy of Western knowledge” in Linda Tuhiwai Smith’s words (2012, xii). While much legal geography has so far been both North/Western and critical, the shared aim is to address the gap between legal representation and spatial experiences wherever and however they are observed. The commitment to better spatial understanding binds legal geographers together, rather than any commitment to a single way of achieving this. Scholars take provincialism seriously, disavowing any unitary taxonomy, a scholarly canon or a single set of methodological tools.

2. Methodology within Legal Geography

So far, most legal geographic research has used empirical and phenomenological methodologies, undertaken in the shared space of social science. Ethnographic methods, for instance, are highlighted as particularly effective since legal geographers are “insiders of the legal world” (Braverman, 2014, 121), enabling scholars to make observations or ask

questions in the field to explore administrative and structural intricacies. Alternatively, ethnographic methods can also be kept separate within a legal geographic project. Michele Statz and Lisa Pruitt, for example, allocated the interviewing part of the research project to Michele Statz, on the basis that she had “training and experience as a qualitative researcher” and without formal legal training could offer a “forthright admission of *not* having a Juris Doctorate” to her lawyer interviewees (2018, 3).

Many legal geographers use mixed methods, including, incorporating legal analysis with interviews, site visits and visual records. Nicholas Blomley (2005), used all three methods in his study of urban gardening, seeking to explore how residents of Strathcona, a suburb in Vancouver, practice and understand urban gardening, as well as how people think about and act in relation to property. Scholars have also used visual approaches to interrogate the ocular, observational emphasis in legal geography. Frode Flemsæter, for instance, has used photographs in his research on Norwegian smallholdings “to put the property in the centre of attention rather than the informant, and to help informants recall memories and histories related to the properties” (2009, 412). Theoretical research methods, probing and expanding our understandings of law and spatiality have also made productive and important contributions to the cross-discipline particularly in critiquing spatial backdrops as “an adjectival context, a background against which considerations of the surrounding space are thrown into relief” (Philippopoulos-Mihalopoulos, 2010, 204, see also Butler and Mussawir, 2017).

The shared thread in all of these methods is a commitment to using geographic concepts in conjunction with these empirical or phenomenological methods, critically analyzing the roles of both law and space in societies (Freeman, 2017). This includes established geographical concepts – space, scale, territory, place, networks, mobility – as well as legal geographic neologisms - “splices”, “nomospheres”, “lawscapes”, chronotopes - to represent a shared understanding of the interactions between legal and geographical thinking (Blomley, 2004, Delaney, 2010, Graham 2010 and Philippopoulos-Mihalopoulos 2014, Valverde, 2015). These shared concepts underpin the methodology (the why) chosen to investigate both law and geography, justifying the selection of individual methods (the how). One reason for scholarly diversity has undoubtedly been the collegial resistance by legal geographic pioneers that either a legal or geographical qualification should be a price of admission to debates. Legal geography is open to scholars in many disciplines, being a qualified lawyer or geography is not a prerequisite, the shared focus is the interaction (Blomley, 1994).

Diversity of method is also inevitable. For, as geographers and legal geographers know well, the academy in which we produce our research inevitably affects the production of research. Achile Mbembe (2015), points out that universities are: “large systems of authoritative control, standardization, gradation, accountancy, classification, credits and penalties”. This has both practical and intellectual implications, as Mbembe explains. “This

hegemonic notion of knowledge production has generated discursive scientific practices and has set up interpretive frames that make it difficult to think outside of these frames. But this is not all. This hegemonic tradition has not only become hegemonic. It also actively represses anything that actually is articulated, thought and envisioned from outside of these frames” (2015, 10). Legal geography can push towards inter-disciplinarity but it is still usually produced within universities where knowledge production processes are embedded within different political economies, jurisdictions and systems. Methodology (and research ethics processes) can become a stick with which we can beat each other, particularly if they are emphasised as signifiers of intellectual sophistication. What we really need here is methodological reflexivity – some contemplation of the “how” of our research – rather than an apparent, universally testable, methodological rigour. There is no single or right way to *do* legal geography.

This preference for contemplation and inclusivity rather than strict schema is increasingly widespread both for scholars and for institutions pursuing interdisciplinary research goals. Within social science, John Law has argued persuasively for a “broader or more generous sense of method”, adapting standard methods to study “the ephemeral, the indefinite and the irregular” (2004, 4). If something is an “awful mess” he asks, “then would something less messy make a mess of describing it?” (2004, 3). And even here, he suggests with Wen-yuan Lin, we must be careful not to universalise a provincial insight. Calling for empirical versatility across scholarly settings, they recall how uncomfortable John Law felt when speaking about STS, ANT and mess in Taiwan, suddenly realising that “the need for messy method was [itself] a decontextualized truth” (2017, 215). There are simply no universal rules.

3. Reading Law Spatially

All this is to say that there is no single way to read law spatially, much will depend on jurisdiction and cultural legal practices. Investigating both spatial and legal practices requires work on the interactions between both law and geography and their disciplinary ways of understanding the world. Academic research and scholarship consist of knowledge practices with claims to legitimacy, validated in different ways. Doctrinal legal scholarship, the bulwark of legal analysis, has long occupied a disputed place in the academy, with particular criticism of exposition, setting out what the law “is” in the form of treatises or textbooks as a “black letter” analysis (Chynoweth, 2004; Cownie 2004). Of course, legal scholarship is far broader than this, particularly when used to understand society, as the Canadian Law and Society Association puts it, to understand “the place of law in social, political, economic and cultural life” (CLSA, 2018) (and conversely, social, political, economic and cultural life in law). When legal geography scholars engage in reading, analysing and interpreting law, they do so to understand how geographic concepts appear (or not) in legal decision-making, their effects on dispute settlement and the creation of both legal and spatial precedents.

To use critical legal scholarship in legal geography, it is still useful to draw on Harry Arthurs' (1983) report on Canadian legal scholarship, where he distinguished between four types of legal research: law reform, expository, fundamental research, and legal theory. While the report caused some professional fireworks (Backhouse, 2003), Arthurs' taxonomy emphasises the difference between stating what the law "is", as a lawyer might do in advising a client by producing expository legal writing and asking how law constructs and is constructed by cultural, economic, political and social processes. This interrogative form of legal research falls into Arthurs' category of "fundamental research" (where he put critical legal studies and law and economics). This questioning approach emphasises, to use Austin Sarat and Thomas Kearns' phrase, that: "Law shapes society from the inside out by providing the principal categories that make social life seem natural, normal, cohesive and coherent" (2009, 22). Interrogating legal categories for their spatial effects on the world, be they contracts, crimes, property or human rights, as well as identifying the spatial assumptions these categories contain, perpetuate or undermine, is fundamental legal (geographic) scholarship.

Reading law spatially is then a growing strand of legal geography, turning, in Rebecca French's words, our "lens on basic 'black-letter law' as a fieldsite" (2009, 127). David Delaney notes that "spatial metaphors ... are ubiquitous in social thought – and particularly in legal thought" (2010). He identifies lawyers and judges as "nomospheric technicians", illustrating how actors create particular world-models through legal moves and spatial imaginaries whilst also foreclosing alternative worlds. Melinda Harm Benson also explores "the idea that litigation is *itself* a space creating process" in her work on the spatiality of (American) rules on judicial review (2014, 215). Spatial readings of cases and legislation enable us to use geographical concepts and techniques within legal analysis to understand better how legal decisions and practices produce and are produced by the world. Disciplinary expertise matters, whether in empirical, analytical or conceptual work for as Laura Nader has warned: "We have much to learn from each other, but if we try to do each other's work, the work suffers from our naiveté and inexperience" (2002: 73). By acknowledging disciplinary strengths, including in reading law, we can expand legal geography's scholarly and policy reach.

Realist, feminist and critical race legal scholars have long demonstrated that legal practice is replete with choices, enrolling assumptions about people or places into governance. The vividly spatial metaphor of the doctrine of *stare decisis* ("to stand by things decided") is not a fixed and static edifice building *ratio* by *ratio* but involves judgment and discretion. This scope for indeterminacy is not always acknowledged in doctrinal legal analysis. Law students still learn to read for rules apparently stripped of their worldly context, the *ratio* of the decision; even if, as feminist and critical race scholars have repeatedly shown, this means incorporating biases and prejudice. Such a focus on the "legally relevant" details relies, as Oliver Wendell Holmes' explained in his 1897 lecture to new law students, on processes of abstraction. Cases, Holmes told the new students, eliminate: "all the dramatic elements

with which [a] client's story has clothed it, and retaining only the facts of legal import, up to the final analyses and abstract universals of theoretic jurisprudence" (Holmes, 1897, 847). Students today are still routinely taught how to perform these reductions. Reading law spatially lets us read for presence and absence, for spatial assumptions, metaphors, absences and biases, putting a geographic spin on Wendell Holmes' "facts of legal import" and "abstract universals of theoretic jurisprudence" to see "facts of spatial import" and "situated applications of theoretic jurisprudence".

Reading cases and legislation spatially, looking for spatial assumptions and biases or evidence of abstraction, lets us draw on the orthodox legal technique of asking questions but ask different ones instead. The formal legal *ratio* will still matter but for legal geographers the questions will also reveal how this *ratio* was reached: are geographical details or concepts assumed or ignored? Are spatial imaginaries present (whether explicitly or implicitly)? Is the site presented as a regulatory "fact" or is there any evidence of spatial particularism that the legal category of place *should* be that way? How are understandings of space and place reconciled with established legal categories of rights, property or judicial review? Are time or temporalities used as discursive or judicial devices? How (if at all) is the history of the site explained? Is there mention of spatial specificity, fauna or flora, noise or smells? Are spatial metaphors used? Is there mention of a site plan or visit? Taking a routine legal technique (asking questions to interrogate judgment) to understand the decision's spatial effects, assumptions and absences sheds light on how law engages with the world beyond doctrine.

There are many lessons for reading law spatially to be drawn from other forms of results-orientated jurisprudence, including critical, Marxist and critical race legal studies. The book cover of the Australian *Feminist Judgments Project* depicts one woman standing on another woman's shoulders, reaching for a volume of Law Reports. Legal geographers also have significant intellectual debts. Observing feminist scholars "ask the woman question" (Bartlett, 2012, 405; Baer, 2009), or critical race scholars asking how "[u]nacknowledged White privilege helps maintain racism's stories" (Solórzano and Yosso 2002, 27), empowers legal geographers to ask spatial questions, questioning whether law *is* anti-geography, and, if so, why or how and what consequences this brings. Feminist legal scholars challenge gender bias in legal doctrine and judicial reasoning, explicitly seeking to remedy injustices and to improve the conditions of women's lives particularly by focusing on particularity and context, giving voice to women who have been silenced or side-lined (Conaghan, 2013). Legal geographers can challenge law's biases, particularly in property, administrative or international law, excavating assumptions about place, networks, boundaries, spatialities and practices, which are doing legal work.

This raises the question: are all legal decisions, practices and legalities spatial? For legal geographers the answer is, yes. Scholars can read any decision or legal provision spatially so that even when spatial characteristics are not immediately obvious, legal geographers can find them. The foundational Scottish 1932 case of *Donoghue v Stevenson*, for instance,

concerns the finding of a snail in a bottle of ginger beer, a cloudy drink with natural sedimentation poured into bottles that were “washed and allowed to stand in places to which it was obvious that snails had freedom of access from outside the defender’s premises, and in which, indeed, snails and slimy trails of snails were frequently found” (1932 HL 31, 32). The problem – the snail in the bottle – can be understood as one of movement and the creation of a manufacturing network that was open and permeable, consisting of spatial relationships between animals and glass, manufacturers and bottle caps. It was the movement of the snails, the lack of physical boundaries (bottle caps were not put on the bottles until after they were filled) and the network of manufacture (including the label with the manufacturer’s name and address, enabling the pursuer to identify the respondent and bring her claim) that came together to produce the dispute. This is no doubt a minor example, but legal geographers embrace the chance of being “spatial detectives” (Bennett and Layard, 2015) investigating the absence or presence of spatiality as well as its legal and social effects.

And so, one reason to read cases spatially is to read for assumptions and biases, perhaps understood in geography but not interrogated in law. In Michele Statz and Lisa Pruitt’s analysis of the use of the word “distance” in American abortion law, for example, they found that while the judges might find quantitative assessments relatively easy to relate to (driving for 550 miles to the nearest Texas clinic, for instance), this “doesn’t require too much of a mental leap to realize how difficult that is.” And yet, if immigration, childcare or work commitments are factored in, “it only tells a small piece of the story, that’s for sure... You know, it could still be difficult if it’s 30 miles” (2017, 13). Distance, Statz and Pruitt conclude, becomes only partially “legally cognizable”. As feminist scholars have long explained, this partial or embodied knowledge is inevitable. Given the power dynamics and legal tactics involved in putting together litigation to an apparently (spatially) objective legal system, litigators assume that quantitative versions of distance are more persuasive in court than subjective, embedded understandings of the concept. This matters enormously to women on the ground dependent on activist lawyers to protect abortion rights, knowing which spatial tactic to pick.

A second reason to read law spatially is to identify any spatial imaginaries invoked or implied. Decisions with effects for types of place, are often built on distinctive spatial visions that may sometimes be quite explicitly articulated. Nicholas Blomley, for instance, has noted how a prevailing legal and liberal imaginary of bounded selves underpins a critique of begging for crossing prevailing cultural and normative boundaries between people. This imaginary of self underpins an understanding of spaces for encounters with difference (including pavements or sidewalks) as threats to autonomy and liberty rather than as spaces of interaction. If the social imaginary of self can be changed, then the spatial imaginary of a “safe” street, public space and pan-handling can also change (Blomley, 2010). Similarly, fearful spatial imaginaries can also do governance work, as Mariana Valverde explains in her book *Everyday Law on the Street*. Writing about the campaign to put “diversity on the

menu” for street traders in Toronto, she notes that regulation to control vendors “may well be due to an unconscious fear of a descent into ‘Third World’ urban chaos ... the ‘Third World city’ specter ... looms large in the ‘regulatory imagination’ as a possibility to be avoided in Toronto” (Valverde, 2012, 144). This particular imaginary was to be avoided.

A third advantage of reading law spatially is that cases can illustrate the difficulties of fitting in. This is a well-established concern in critical race studies. Patricia Hill Collins has highlighted how: “Oppressed groups are frequently placed in the situation of being listened to only if we frame our ideas in the language that is familiar to and comfortable for a dominant group” (2002, vii). We are in the earliest days of academic understanding how race and legal geography explicitly interact, but it is evident that particularly in Northern and Western jurisdictions spatial concepts may not necessarily “fit in” to existing legal discourse and practice producing systematic repression and discrimination. In *Subversive Property*, Sarah Keenan (2014) has explained how Australian property practices imposed leasehold arrangements onto aboriginal ways of living and cultural practices, requiring communities to fit in with the leases’ conceptual grids rather than the other way around. Sherene Razack, meanwhile, has demonstrated how the litigation following the rape and killing of Pamela George in 1995 attached a space of violence to her wherever she went: “While Pamela George remained stuck in the racial space of prostitution where violence is innate, the men were considered to be far removed from the spaces of violence”. For Pamela George, wherever she went, the “implicit spatial underpinning” went with her: “She was of the space where murders happen; [her attackers] were not” (Razack, 2010, 126). Pamela George had to fit into her allocated space, the men into theirs. And if spatial ontologies do not fit, results can be violently or legally imposed, with an end result that produces victory for one worldview over another (Watson, 2014). Reading cases for spatial fit can identify when such spatial mismatches occur and the work they are doing in legal decision-making.

A fourth reason for reading law spatially is profoundly practical. Reading cases to glean geographic details about the setting or event provides a basis from which to ask future questions (both conceptual or practical). Indigenous legal scholar Val Napoleon (2016) reminds us that “Law is an intellectual process, not a thing, and it is something that people actually do.” This is a particularly important lesson within legal geography, with its commitment to the world, particularly if we take on board Aja Y. Martinez’s (2014) caution that academia prefers “the strength of logos” to pathos in academic exchanges. Reading from the perspective of the place, the network or the type of event rather than the *ratio* provides a far clearer guide to how other places, networks or events might be regulated in the future.

4. Applying the Method

By way of illustration, let us read the 1999 decision by the House of Lords, *DPP v Jones* ([1999] 2 AC 240), spatially. *DPP v Jones* is hugely significant for English highways law, a

category of place where it is still possible (largely thanks to this judgment) to act in public regardless of whether the land itself is publicly or privately owned. The facts were that on 1 June 1995, at about 6.40 p.m. 21 protestors held banners saying: "Never Again", "Stonehenge Campaign 10 years of Criminal Injustice", and "Free Stonehenge." The policeman asked the protestors to move off the verge and while many did, the litigants, Mr. Lloyd and Dr. Jones, did not. Arrested and convicted for taking part in a "trespassory assembly", they eventually appeared before the House of Lords, then the highest court in the UK. The court held, by majority, that an assembly of this type would not be an unreasonable use of the highway (Lords Irvine, Hutton and Clyde), rejecting the minority view that only activities incidental to passing and re-passing would be acceptable (Lords Slynn and Hope). In English and Welsh law, a highway includes the road as well as pavements and verges (where these protestors stood) so the finding creates an important legal and spatial precedent for people wanting to be on pavements and verges – rather than in the middle of the road – for quite everyday activities.

In his leading decision in favour of the protestors, Lord Irvine performed the remarkable feat of making the dispute fit in with his view of the law rather than applying the law to the site. Rather than beginning with questions of highway obstruction, Lord Irvine, the then Lord Chancellor, began with a bold legal, and spatial, move, challenging spatial fit. His opening paragraph began: "My Lords, this appeal raises an issue of fundamental constitutional importance: what are the limits of the public's rights of access to the public highway?" ([1999] 2 AC 240, 251). He held that understandings of highways had to mesh with constitutional law, particularly given the incoming Human Rights Act 1998 and its direct implementation of the European Convention on Human Rights. This technique of making the site fit the law rather than applying the law to the site is all too common, as Sandy Kedar et al's book *Empty Lands*, illustrates, analysing the litigation brought by Bedouin people displaced from parts of the Negev Desert. Here, as Kedar et al show, a particular – limited, contemporary and rather absolute – specification of how to define a village or settlement produces assessments about land ownership claims that are apparently legally quite straightforward. Adopting a modern "law first" approach and assessing historical use patterns against current legal and geographic definitions, misses the detail and specificity of how Bedouin people in the nineteenth century moved *and* farmed, a way of life that was (and still can be) dynamic and relational, not easily fixed by coordinates or conceptual boundaries. The test for ownership, however, had to fit more bounded spatial and legal norms.

Spatial assumptions are clearly evident in *DPP v Jones*. As Nicholas Blomley (2010) demonstrated in his book on sidewalks, *Rights of Passage*, mobility is the leitmotif for pavements and highways. Lord Irvine confirmed this point, saying that protest could only be permitted if people and things did not cause an obstruction and were neither a nuisance nor unreasonable. The spatial assumption of the primacy of mobility did not go away although it was only Lord Hope, dissenting, who was concerned with the rights of landowners in this

context, seeing the highway in terms of property, involving access by the public “to their land”. The spatial assumption that highways are property belonging to an owner was otherwise noticeable by its absence since the remaining judges preferred to see highways as a spatial category largely unaffected by ownership. This work done by spatial categories and assumptions here echoes the analysis by Sarah Keenan in her (2014) study of migrant workers, where an absolute conception of space with hard borders creates a binary between citizens and non-citizens, underplaying the plural and dynamic relationships migrant workers create between global communities and networks. Legal geography surfaces these assumptions, identifying biases even if they are remarkably mundane (highways are for mobility, they are not envisaged as property) illustrating the work these spatial moves are doing in apparently abstract legal reasoning (see also Delaney, 2010).

DPP v Jones is unusual in that the judges were unusually explicit about their spatial imaginaries of the highway. Lord Irvine, held that “the public highway is a public place which the public may enjoy for any reasonable purpose, provided the activity in question does not amount to a public or private nuisance and does not obstruct the highway by unreasonably impeding the primary right of the public to pass and repass: within these qualifications there is a public right of peaceful assembly on the highway.” ([1999] 2 AC 240, 257). It was this framing of the highway as a public place – where being in public entailed a wide array of activities, including “ordinary and usual activities as making a sketch, taking a photograph, handing out leaflets, collecting money for charity, singing carols, playing in a Salvation Army band, children playing a game on the pavement, having a picnic, or reading a book, would qualify” ([1999] 2 AC 240, 255), which underpinned his rejection of a view of the highway as solely for activities incidental to passing and re-passing. In contrast, Lord Clyde dissenting, presented a much narrower spatial (& explicitly Christian) imaginary, allowing for the singing of hymns or Christmas carols, looking in shop windows, queuing to enter the shop or using the highway for a moving procession. These imaginaries underpin both spatial and legal precedents, which thanks to Lord Irvine’s judgment frame highways as a “public place”, albeit one that prioritises flow and movement, restricting obstructions (whether by people, animals or things), nuisance or, that great legal weasel word “unreasonable”, use. As Luke Bennett (2016) has illustrated in his analysis of Arkwright’s “place-models” at his Cromford mills in 18th Century England, “place-forms” such as factories can be replicated, both locally and globally, once the key material, economic, cultural and legal assumptions are worked out.

Lastly, reading the case spatially provides the spatial and temporal insights that emerged in subsequent protest litigation, giving profoundly practical advice. The site of the dispute in *DPP v Jones* was a “roadside verge of the A344, next to the perimeter fence of Stonehenge”. Their Lordships distinguished other spatial contexts, including, “a narrow road” (Lord Irvine) or “a small, quiet country road” (Lord Hutton). In narrow or smaller locations, the exercise of these public activities in a public place might not be possible since – though this point is implicit rather than expressly made – obstruction would be more likely to occur. Similarly,

Lord Irvine's judgment, for example, permits only temporary activities ("a picnic" but not "a protest") and no camping, a temporal limitation that proved decisive in the 2012 Occupy litigation (Layard, 2016).

5. Conclusion: Imaginative leaps

Reading cases spatially requires a leap of imagination analogous to that in the *Feminist Judgment Projects* where "the imaginative gap between the legal establishment and feminist legal theory is at last being reduced" (Davies, 2012, 167). Imaginative leaps are often central in reform, where believing that things might be different requires visualisation and faith. It also requires hope, as Kristie Dotson has written of Patricia Hill Collins's book *Black Feminist Thought*: "Collins's book became one of my epistemological cornerstones. It made all the difference in the world to me and once that difference was made, it could not be unmade" (2014, 2322). Extending our vision and lifting our eyes as legal geography exhorts us to do, enables us to draw on imaginations whether sociological (Mills 2000; Taylor 2004) or geographical (Harvey 1990, Gregory 1994) to look up from the familiar routines of daily life, including the familiar routines of reading law.

Once imaginations are invoked, we can explore alternative spatial imaginaries, borrowing insights from critical race studies that rhetoric, composition and narrative are all productive "tools by which to interrogate the effects of racial bias" to develop "counterstories" (Martinez, 2014, 36). Alternative tellings or representations enables marginalised people (or perspectives) to challenges "master narratives" (Yosso, 2006, p. 10). Shifting perspective – using composition or narrative - enables "voices from the margins become the voices of authority" in researching experiences (Solórzano & Delgado Bernal, 2001, p. 314). Similarly, the shared intellectual threads with Wild Law scholars centring the earth in scholarship, teaches how – practically – to change perspective (Maloney and Rogers, 2017). Once we understand and expose the spatial assumptions, imaginaries and presumed "fit" that are being presented as ostensibly neutral, abstract *ratios*, we can demonstrate how alternative imaginaries might lead us to different legal results that acknowledge spatiality, producing more geographically-sensitive and representative legal rules and practices. Most of all, perhaps, legal geographers can learn progressive lessons of imagination from indigenous jurisprudence, where place, sovereignty and authority have for centuries been interwoven in spatially-sensitive ways, where "laws are lived as a way of life" as Irene Watson explains (2003, 255) or in John Borrows' words, understanding that: "A well-functioning legal system is built through good living" (Borrows, 2016b, 3).

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